

In the United States Court of Appeals  
for the Ninth Circuit

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ROBERT C. KIRKWOOD, CONTROLLER OF THE  
STATE OF CALIFORNIA, APPELLANT

v.

LEE ARENAS, RICHARD BROWN ARENAS AND UNITED  
STATES OF AMERICA, APPELLEES

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APPEALS FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA,  
CENTRAL DIVISION

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MEMORANDUM FOR THE UNITED STATES

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PERRY W. MORTON,  
*Assistant Attorney General.*

LAUGHLIN E. WATERS,  
*United States Attorney,  
Los Angeles, California.*

ROGER P. MARQUIS,  
FRED W. SMITH,  
*Attorneys, Department of Justice,  
Washington, D. C.*

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for the Ninth Circuit**

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No. 15243

ROBERT C. KIRKWOOD, CONTROLLER OF THE  
STATE OF CALIFORNIA, APPELLANT

*v.*

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*APPEALS FROM THE UNITED STATES DISTRICT COURT  
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CENTRAL DIVISION*

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**MEMORANDUM FOR THE UNITED STATES**

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This case was initiated by appellees Lee Arenas and Richard Brown Arenas by the filing of a petition for a determination that the funds in question, the proceeds of sale of Indian trust allotments, were not subject to taxes under the laws of the State of California or the United States. The United States, after thorough examination of the matter, filed an amended answer in which it stated that the United States was not claiming a lien against the funds for federal estate or other taxes. The Government also took the position in the trial court that such funds are necessarily immune, by federal law, from California tax laws (Fdg. 2, R. 84).

The United States, after examination of the briefs filed by appellant and by appellees Arenas, is of the opinion that the issues and applicable law are well developed therein, and that further briefing by the Government would be generally cumulative. However, it is noted that appellant (Br. 12-20) pitches his case on the position that the tax exemption embodied in Section 6 of the General Allotment Act is not applicable to allotments made under the Mission Indian Act of 1891. While we endorse the argument of appellees Arenas (Br., pp. 13-16) as disposing of this contention, the Court's attention is directed also to the following provision of the Joint Resolution of June 19, 1902, 32 Stat. 744, which is equally dispositive of the matter:

Insofar as not otherwise specially provided, all allotments in severalty to Indians, outside of the Indian Territory, shall be made in conformity to the provisions of the Act approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," and other general Acts amendatory thereof or supplemental thereto, and shall be subject to all the restrictions and carry all the privileges incident to allotments made under said Act and other general Acts amendatory thereof or supplemental thereto.

The Government, of course, adheres to the position taken below and, upon the exhaustive opinion of the trial court (R. 72-82) and the brief filed in this Court by appellees Arenas, submits that the conclusion of the

district court that the funds are immune from State taxation is correct, and that the judgment appealed from should be affirmed.

Respectfully submitted,

PERRY W. MORTON,  
*Assistant Attorney General.*

LAUGHLIN E. WATERS,  
*United States Attorney,  
Los Angeles, California.*

ROGER P. MARQUIS,  
FRED W. SMITH,  
*Attorneys, Department of Justice,  
Washington, D. C.*

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